

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

EUGENIA K. SONG,

Plaintiff,

v.

PETER COLEMAN, PH.D.,¹

Defendant.

Case No. 3:23-cv-407-JR

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Jolie A. Russo issued Findings and Recommendation in this case on May 3, 2023. ECF 16. Judge Russo recommended that this Court dismiss Plaintiff's amended complaint without prejudice and deny Plaintiff's motion for a preliminary injunction and request for disqualification. On May 16, the Court granted Plaintiff's request for an extension of time to file objections. ECF 23. No party has filed objections.

Under the Federal Magistrates Act (Act), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party objects to a magistrate judge's findings and recommendations, "the court

¹ This case was previously captioned *Song v. Columbia University, et al.* In her amended complaint, Plaintiff dropped all claims against Columbia University, ECF 10.

shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Russo’s Findings and Recommendation for clear error on the face of the record. Judge Russo gives three grounds on which to dismiss Plaintiff’s complaint: failure to state a claim, improper venue, and lack of personal jurisdiction. The Court adopts Judge Russo’s Findings and Recommendation on failure to state a claim and lack of venue. The Court declines to reach the issue of personal jurisdiction on this *sua sponte* consideration of Plaintiff’s complaint. As such, the Court declines to adopt this portion of the Findings and Recommendation.

No error is apparent on those portions of the Findings and Recommendation that address Plaintiff's motion for a preliminary injunction or request for reassignment. The Court adopts those portions of the Findings and Recommendation.

The Court ADOPTS IN PART Judge Russo's Findings and Recommendation, ECF 16. The Court DISMISSES Plaintiff's amended complaint, ECF 10; ECF 15. The Court DENIES Plaintiff's motion for a preliminary injunction, ECF 6, and requests for disqualification, ECF 14; ECF 18. The Court also DENIES Plaintiff's Motion for Subpoena, ECF 23, as moot. No service of process or subpoenas shall be issued unless Plaintiff files a complaint that survives the Court's *sua sponte* review. If Plaintiff believes she can cure the defects identified by Judge Russo, Plaintiff may file a second amended complaint within 30 days of this Order. Failure to file an amended complaint by that date will result in the Court entering a judgment dismissing this case without prejudice, but without leave to refile in this Court.

IT IS SO ORDERED.

DATED this 29th day of June, 2023.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge